

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD 1099 14th STREET NW WASHINGTON DC 20570

May 18, 2012

Re: K-VA-T Food Stores, Inc, d/b/a Food City

Case 09-CA-046125 et al.

ORDER

Counsel for the Acting General Counsel has filed a Motion to Strike a Portion of Respondent's Brief in Support of Exceptions. Counsel seeks to strike the Respondent's brief in support of its exceptions to the judge's decision to the extent it raises the argument that private settlements entered into with three of its employees who the administrative law judge found were unlawfully discharged precludes all remedial relief for those employees. The Respondent's exceptions contest the judge's findings of violation, but the exceptions do not state that the discharged employees are entitled to no remedial relief in the event that the discharges are found to be unlawful. The Respondent filed no exceptions to any of the judge's proposed remedies. The argument in the Respondent's brief that asserts that the discharged employees are entitled to no remedial relief because of private settlements raises a new argument not found in the Respondent's exceptions. Accordingly, we shall disregard that argument pursuant to Section 102.46(c) of the Board's Rules and Regulations. See A-1 Door, 356 NLRB No. 76 (2011); Engineered Comfort Systems, 346 NLRB 661, 661 (2006). The Motion to Strike a Portion of Respondent's Brief in Support of Exceptions is granted. By direction of the Board:1

Gary Shinners
Deputy Executive Secretary

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¹ Inasmuch as the Board has the authority to address remedial issues sua sponte, Member Hayes finds no need to pass on the motion to strike.